

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ALABAMA
MOBILE DIVISION**

IN ADMIRALTY

JOEL W. GREEN,

Plaintiff(s)

v.

CIVIL CASE NO: 10-0481-WS-M

CLYDE M. ROBERTS, III,
INDEPENDENT MARINE
CONSULTANTS, INC.,

Defendant(s).

CONSENT MOTION FOR STAY PENDING APPEAL

Plaintiff, JOEL W. GREEN, by and through undersigned counsel, moves this Court for an Order Staying this Action Pending the Related Appeal, and as grounds therefore states:

1. The operative facts underlying in this action were the subject of Joel W. Green v. United States, et al., in United States District Court for the Middle District of Florida, case number 3:07-cv-638-J-34-MCR. The cause was filed under the Suits in Admiralty and Public Vessel Acts. The judgment in that case is on appeal to the 11th Circuit Court of Appeals, consolidated case Nos. 10-11833-FF & 10-11975-FF.

2. The central contention of the appeal is that the District Court erred in its finding that Mr. Roberts, the individual (and corporate owner) defendant herein, was not an agent of the United States. Those acting as agents for the United States may not be sued directly. Those who are not agents of the United States may. If the appeal is successful, the result will be a finding that, as plaintiff has contended, Mr. Roberts was an agent of the United States. This action has been

filed to protect against the possibility that the decision of the District Court is affirmed, but Plaintiff would not be permitted to continue the action in the event of a reversal. In that event, this action will be due to be dismissed. If, on the other hand, the judgment of the District Court is affirmed, this action may proceed on the merits.

3. Plaintiff/appellants initial brief has been filed, and the Answer brief is currently due in early December, 2010.

4. The resources of the parties as well as the resources of this court will be wasted by the prosecution of this action if the appeal is successful. A stay of this action pending the appeal is in the best interests of all concerned.

5. Counsel for Defendants, Warren Butler, Esq., has represented his intention to file a written consent to this Motion, which was tendered for his review prior to filing. In addition, counsel for Proposed Intervenor¹ (representing lien interests) Douglas L. Brown, Esq., has authorized Plaintiff to represent their stipulation and consent to the stay requested by this motion.

MEMORANDUM

Where the Public Vessels Act (PVA) or Suits in Admiralty Act (SAA) provides a remedy against the United States, there is no recourse against a government agent whose actions engendered the lawsuit. 28 U.S.C.A. § 1333; Suits in Admiralty Act, §§ 1-12, [46 App.U.S.C.A. §§ 741-752](#); Public Vessels Act, §§ 1-10, [46 App.U.S.C.A. §§ 781-790](#).

The determination of whether or not to grant a stay under the circumstances is within the sound discretion of this court. The power to stay proceedings, so as to promote fair and efficient adjudication, is incidental to the Court's inherent power to control the disposition of the cases on

¹ Their Motion to Intervene is anticipated contemporaneously.

its docket. *Gold v. Johns-Manville Sales Corp.*, 723 F.2d 1068 (3d Cir.1983) (citing *Landis v. North American Co.*, 299 U.S. 248, 254 (1936)). When determining whether a stay is appropriate, a Court will balance the competing interests, consider the possible damage, hardship, and inequities and conserve judicial resources. *Lenox Hotel Co. v. Charter Builders, Inc.*, 717 F.Supp. 1558, 1564 (N.D.Ga.1989). See *Conoco, Inc. v. Skinner* 1991 WL 317019, 1 (D.Del.) (D.Del.,1991).

In the instant case, both parties will incur significant litigation expense which is expected to be moot in the event of a successful appeal. The time and resources of the judiciary will also be wasted.

By separate Motion, Plaintiff has requested an extension of time within which to respond to the Motion to Dismiss filed by Defendants [Docket 13], pending consideration of this motion. Defendants consent to this request. Plaintiff submits (Defendant disputes) that the unusual circumstances of this case present questions of accrual of an action and tolling of statutes of limitations which themselves require substantial discovery and litigation - litigation that will not be required in the event the appeal is successful.

WHEREFORE, the parties stipulate and consent to the stay of this action, pending the appeal discussed above, and request the entry by this court of an order staying this action pending the appeal.

CERTIFICATION OF COUNSEL PURSUANT TO LOCAL RULE

Undersigned counsel hereby certifies that he has conferred with Warren Butler, Esq. and Douglas L. Brown, Esq., counsel for the opposing party and proposed intervenors, respectively, in a good-faith effort to resolve the issues raised by this motion, and that opposing counsel

XX does (~~not~~) agree.

BOYD & SUTTER, P.A.

November 30, 2010

/s Howard T. Sutter

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY service by CM/ECF where authorized, and by United States mail upon any party not so authorized, of a true and correct copy of the foregoing, together with all attachments upon the following persons this November 30, 2010:

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